



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

Robert S. Plotkin  
McGuire Woods, LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036

FEB 25 2005

RE: MUR 5405  
James Chao  
Apex Healthcare, Inc.

Dear Mr. Plotkin:

On February 8, 2005, the Federal Election Commission found that there is reason to believe Apex Healthcare, Inc. and James Chao violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Additionally, the Commission found, with respect to James Chao, that there is reason to believe that the violations of the Act were knowing and willful. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

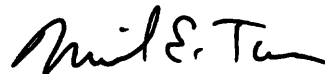
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Vice Chairman

#### Attachments

1. James Chao Factual and Legal Analysis
2. Apex Healthcare, Inc. Factual and Legal Analysis
3. Proposed Conciliation Agreement
4. Procedures

cc (w/attachments): William J. Farah  
Oldaker, Biden & Belair, LLP  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, DC 20006

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: James Chao

MUR 5405

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Gerald Jaecks. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL SUMMARY**

**A. BACKGROUND**

James Chao ("Chao") is a United States citizen residing in Naperville, Illinois, a suburb of Chicago. *See* Submission, at 2. Chao is the President and sole shareholder of APEX Healthcare, Inc. ("APEX"). *See id.* at 3. APEX is a subchapter S corporation that provides claims processing services to hospitals and medical practices in the Chicago area. APEX employs between 35 and 40 individuals. *See id.* Prior to incorporating APEX, Chao owned Metro Provider Services Corp., a similar corporation in the health care industry. *See id.* at 2.

Chao is an experienced political contributor. In 1994, according to state disclosure records, he apparently began contributing to state political campaigns. *See* Illinois State Board of Elections. In 1997 and 1998, he contributed a total of \$4,500 to federal candidates running for office in Illinois. *See* FEC Contributor Database. In 1998, as permitted under state law, Metro Provider Services Corp. contributed \$9,605 to Friends of Dan Hynes, the state committee established to support Daniel Hynes's candidacy for Illinois state comptroller. *See* Illinois State Board of Elections. Metro Provider Services Corp., and later APEX, continued to contribute to

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Friends of Dan Hynes from 1999 to 2003. *See id.* In addition, APEX employees and their family members donated \$33,000 to Friends of Dan Hynes from June 2000 to November 2002. *See id.*

## **B. THE FACTS**

In early 2003, Daniel Hynes announced his candidacy for the U.S. Senate from Illinois.<sup>1</sup> According to the Submission, Chao attended the announcement, where Hynes approached Chao and asked how much money he could raise to support his principal campaign committee. *See* Submission, at 6. Chao responded that he could raise between \$15,000 and \$20,000 in the first quarter of 2003. *See id.* Daniel Hynes and Chao reportedly had similar conversations in each quarter of 2003, and Chao continued to respond that he could raise the same amount in each subsequent quarter. *See id.*

In a joint response, APEX and Chao admit using corporate funds to reimburse \$48,000 in contributions to Hynes for Senate made by others. *See* Response, at 2. APEX and Chao claim, however, that APEX did not reimburse the personal contributions made by Chao to Hynes for Senate. *See id.* at 2-3.

APEX and Chao also filed a supplemental Submission (the "Submission"), which contains significantly more information than APEX and Chao provided in their formal response to the complaint. The Submission contains detailed information relevant to the allegations contained in the complaint, admissions as to most of the allegations, the disclosure of similar violations that were not alleged in the complaint, and a request for pre-probable cause conciliation. APEX and Chao admit to making a total of \$89,500 in contributions to Hynes for Senate in 2003, \$29,500 more than alleged in the complaint. *See* Submission at 2, 7. Of this

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<sup>1</sup> Hynes ultimately placed second in the Democratic primary to Barack Obama.

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amount, APEX and Chao admit reimbursing a total of \$69,500 in contributions from family members, APEX employees, or their family members. *See id.*, at Ex. A. Chao solicited these contributions by approaching family members or APEX employees and asking them to make a contribution (and/or have a family member make a contribution), which he reimbursed with either an APEX corporate check or cash.<sup>2</sup> *See id.* at 5. According to the Submission, at the end of each quarter, Chao would gather all of the monetary contributions to Hynes for Senate and hand-deliver them to Hynes for Senate's office. *See id.* at 7. Chao gave the contributions directly to the campaign manager, Matthew Hynes, or to someone else in the office if he was not available. *See id.*

APEX and Chao deny reimbursing the remaining \$18,500 in contribution to Hynes for Senate. They claim that Chao personally contributed \$14,000 to Hynes for Senate and his wife, Annie Ma Chao, contributed an additional \$4,500 to the committee.<sup>3</sup> *See id.*, at 7. In both cases, Chao contends that the contributions came from personal funds. *See id.* In support of this claim, Chao provides personal checks to Hynes for Senate that either he or his wife signed. *See id.*, at Ex. D.

APEX and Chao contributed the remaining \$1,500 to Hynes for Senate by supplying the campaign with office furniture free of charge. According to the Submission, in the fall of 2003, Hynes for Senate approached Chao and asked if he had any used furniture he could contribute because the Hynes campaign increased the size of its campaign staff and office space. *See id.*, at

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<sup>2</sup> In addition to the individuals identified in the complaint as allegedly being reimbursed, the Submission names Frances Mattivi, an APEX employee, and Jeff Burdelik, Marian Steng and Mei Fung Choi, relatives of APEX employees, as having contributions to Hynes for Senate reimbursed with APEX funds. *See Submission*, at Ex. A.

<sup>3</sup> Hynes ran against Blair Hull, who spent \$29 million of his own money in the primary, thus invoking the Millionaire's Amendment. Based on Hull's campaign expenditures, the contribution limit for individuals increased to a total of \$14,000 (\$12,000 for the primary and \$2,000 for the general election). *See* 2 U.S.C. § 441a(i)(1)(c)(iii).

7. Chao agreed and provided desks from APEX's offices and a brand new sofa and refrigerator that he purchased with APEX corporate funds. *See id.*

In addition to the contributions to Hynes for Senate that APEX and Chao reimbursed, the Submission identifies contributions to other federal committees that were reimbursed in 2002. According to the Submission, while working on Hynes's state reelection campaign in 2002, Matthew Hynes approached Chao and asked him to contribute or solicit contributions for the federal campaigns of Marty Castro, Bill Nelson, and Mark Shriver. *See Submission*, at 6. According to Chao, Matthew Hynes wanted to build a base to assist his brother in a potential federal race. *See id.* Chao agreed to help and solicited contributions from APEX employees and their relatives with the promise that he would reimburse them for the full amount of the individuals' contributions. *See id.* Chao claims to have raised a total of \$6,000 in 2002 for the federal candidates identified by Matthew Hynes. *See id.* All told, APEX and Chao admit to using corporate funds to make \$77,000 in contributions to federal candidates in 2002 and 2003, which are specifically identified in the following chart:

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DATE	CONTRIBUTOR	RELATIONSHIP	AMOUNT	CANDIDATE/ORGANIZATION
02/19/02	Monica Fletcher	Sharon Linares's mother	\$1,000	People for Marty Castro
02/21/02	Marian Stang	Dawn Burdelik's mother	\$1,000	People for Marty Castro
09/06/02	Jeffrey Burdelik	Dawn Burdelik's husband	\$1,000	Citizens for Mark Shriver
09/06/02	Frances Mattivi	APEX employee	\$1,000	Citizens for Mark Shriver
10/08/02	Dawn Burdelik	APEX employee	\$1,000	Bill Nelson for Senate
10/08/02	Sharon Linares	APEX employee	\$1,000	Bill Nelson for Senate
03/05/03	Dawn Burdelik	APEX employee	\$4,000	Hynes for Senate
03/05/03	Kin Cheung	APEX employee	\$4,000	Hynes for Senate
03/05/03	Sharon Linares	APEX employee	\$4,000	Hynes for Senate
03/05/03	Lawrence Yip	APEX employee	\$4,000	Hynes for Senate
06/30/03	Grace Chao	James Chao's mother	\$6,000	Hynes for Senate
06/30/03	Monica Fletcher	Sharon Linares's mother	\$4,000	Hynes for Senate
06/30/03	Marian Stang	Dawn Burdelik's mother	\$4,000	Hynes for Senate
09/29/03	Dawn Burdelik	APEX employee	\$2,000	Hynes for Senate
09/29/03	Charissa Chao	James Chao's sister-in-law	\$4,000	Hynes for Senate
09/29/03	Philip Chao	James Chao's brother	\$4,000	Hynes for Senate
09/29/03	Kin Cheung	APEX employee	\$4,000	Hynes for Senate
09/29/03	Monica Fletcher	Sharon Linares's mother	\$2,000	Hynes for Senate
09/29/03	Sharon Linares	APEX employee	\$2,000	Hynes for Senate
09/29/03	Marian Stang	Dawn Burdelik's mother	\$2,000	Hynes for Senate
09/29/03	Amy Yuen	Lawrence Yip's wife	\$4,000	Hynes for Senate
10/03	James Chao	In-kind (furniture)	\$1,500	Hynes for Senate
12/30/03	Dawn Burdelik	APEX employee	\$1,700	Hynes for Senate
12/30/03	Kin Cheung	APEX employee	\$1,800	Hynes for Senate
12/30/03	Monica Fletcher	Sharon Linares's mother	\$1,900	Hynes for Senate
12/30/03	Sharon Linares	APEX employee	\$1,600	Hynes for Senate
12/30/03	Marian Stang	Dawn Burdelik's mother	\$1,800	Hynes for Senate
12/30/03	Amy Yuen	Lawrence Yip's wife	\$1,600	Hynes for Senate
12/31/03	Grace Chao	James Chao's mother	\$2,000	Hynes for Senate
12/31/03	Mei Fung Choi	Kin Cheung's wife	\$1,400	Hynes for Senate
12/31/03	Lawrence Yip	APEX employee	\$1,700	Hynes for Senate
		<b>Total</b>	<b>\$77,000</b>	

### III. LEGAL ANALYSIS

Chao acknowledges reimbursing contributions made by others with corporate funds. *See* Response, at 2; Submission, at 2.

Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.

§ 441b(a). In addition, section 441b(a) prohibits any officer or director of any corporation from

consenting to any expenditure or contribution by the corporation. The Act also provides that no person shall make a contribution in the name of another person or knowingly permit their name to be used to effect such a contribution. 2 U.S.C. § 441f.

Chao admits reimbursing \$48,000 of the contributions identified in the complaint. *See* Response, at 2. In the Submission, Chao also identifies \$6,000 in contributions made in 2002 and an additional \$21,500 in contributions made in 2003 that he reimbursed with APEX funds. *See* Submission, at 2.

In the Submission, Chao also discloses that he used corporate funds to contribute approximately \$1,500 in furniture to Hynes for Senate in October 2003. *See* Submission, at 7. Thus, Chao admits using corporate funds to make a direct in-kind contribution to Hynes for Senate in violation of 2 U.S.C. § 441b.

APEX and Chao do not explicitly deny knowingly and willfully violating the Act, but instead justify their actions by arguing that: 1) Chao had a limited understanding of federal election law and relied on the Hynes campaign to inform him of the Act's requirements, *see* Submission, at 4; 2) Illinois law permits corporations to contribute in state elections, *see id.*; 3) APEX's tax status as a subchapter S corporation created confusion between corporate and personal funds, *see id.*; 4); Chao wanted to hide the extent of his political contributions from his wife, who in 1998, in response to a downturn in business, urged him to reduce his political contributions, *see id.*; 5) he was motivated by a desire to participate in the democratic process and not by personal benefit, *see id.*; and 6) he wanted to keep a low profile to avoid requests for funds from other candidates. *See id.* at 5.

Irrespective of these justifications, there is a sufficient basis for finding reason to believe that APEX and Chao knowingly and willfully violated the Act. Most significantly, Chao was an



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experienced contributor who admits that he not only “knew that he could not use corporate funds for federal contributions” and that there were general limitations on the amount of money he could contribute as an individual, but knew the specific limitations on his individual contributions through repeated contact with the Hynes campaign about precisely how much he could contribute under the Millionaires’ Amendment. *See* Submission, at 2, 4. Therefore, even if he believed that his S corporation funds counted as his personal funds, Chao had to have known that he had already contributed the maximum amount to Hynes for Senate in individual contributions.

Nevertheless, available information suggests that Chao did not view his personal funds and APEX’s funds as one and the same. In fact, in challenging the allegation that he used APEX funds to reimburse personal contributions to Hynes for Senate, Chao defended himself by producing personal checks written to Hynes for Senate. *See id.*, at Ex. D. The use of personal checks illustrates that he knew the difference between a permissible personal contribution and a prohibited corporate contribution, regardless of APEX’s tax status.<sup>4</sup>

Similarly, the claim that he used conduits solely to hide contributions from his wife is also unconvincing. From 1998 to 2001, APEX directly contributed \$12,605 to Friends of Dan Hynes. *See* Illinois State Board of Elections. Similarly, APEX employees contributed \$15,000 to Friends of Dan Hynes during the same time period.<sup>5</sup> *See id.* Nevertheless, the fact that Chao

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<sup>4</sup> The Act does not distinguish between subchapter S corporations and other corporations in the context of the blanket prohibition of corporate contributions. All corporations “receive from the state the special benefits conferred by the corporate structure and present the potential for distorting the political process.” *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 661 (1990).

<sup>5</sup> Chao admits reimbursing state contributions with corporate funds as well, but did not disclose the time period, amounts, or number of contributions. Contributions in the name of another are not permitted under Illinois law.

may have been motivated partially by a desire to deceive his wife does not contradict the appearance that he knew that what he was doing violated the Act.

Finally, Chao's argument that he used conduits because he wanted to keep a low profile indicates a willful desire to hide the true source of his contributions. Furthermore, this explanation appears at least potentially inconsistent with Chao's acknowledgement that he promised to raise large sums of money because he wanted "to convince the Hynes campaign that he could generate significant contributions from his network, in order to enhance his own importance." *Id.* at 7.

#### IV. CONCLUSION

Accordingly, there is reason to believe that Chao knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by making \$75,500 in contributions in the names of others and using corporate funds to reimburse the contributions and by making an in-kind contribution of \$1,500 with corporate funds.

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Apex Healthcare, Inc.

MUR 5405

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Gerald Jaecks. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL SUMMARY**

**A. BACKGROUND**

Apex Healthcare, Inc. ("APEX") is a subchapter S corporation whose President and sole shareholder is James Chao ("Chao"). *See* Submission, at 2. APEX provides claims processing services to hospitals and medical practices in the Chicago area. APEX employs between 35 and 40 individuals. *See id.* Prior to incorporating APEX, Chao owned Metro Provider Services Corp., a similar corporation in the health care industry. *See id.* at 2.

In 1998, as permitted under state law, Metro Provider Services Corp. contributed \$9,605 to Friends of Dan Hynes, the state committee established to support Daniel Hynes's candidacy for Illinois state comptroller. *See* Illinois State Board of Elections. Metro Provider Services Corp., and later APEX, continued to contribute to Friends of Dan Hynes from 1999 to 2003. *See id.* In addition, APEX employees and their family members donated \$33,000 to Friends of Dan Hynes from June 2000 to November 2002. *See id.*

## B. THE FACTS

In early 2003, Daniel Hynes announced his candidacy for the U.S. Senate from Illinois.<sup>1</sup> According to the Submission, Chao attended the announcement, where Hynes approached Chao and asked how much money he could raise to support his principal campaign committee. *See* Submission, at 6. Chao responded that he could raise between \$15,000 and \$20,000 in the first quarter of 2003. *See id.* Daniel Hynes and Chao reportedly had similar conversations in each quarter of 2003, and Chao continued to respond that he could raise the same amount in each subsequent quarter. *See id.*

In a joint response, APEX and Chao admit using corporate funds to reimburse \$48,000 in contributions to Hynes for Senate made by others. *See* Response, at 2. APEX and Chao claim, however, that APEX did not reimburse the personal contributions made by Chao to Hynes for Senate. *See id.* at 2-3.

APEX and Chao also filed a supplemental Submission (the "Submission"), which contains significantly more information than APEX and Chao provided in their formal response to the complaint. The Submission contains detailed information relevant to the allegations contained in the complaint, admissions as to most of the allegations, the disclosure of similar violations that were not alleged in the complaint, and a request for pre-probable cause conciliation. APEX and Chao admit to making a total of \$89,500 in contributions to Hynes for Senate in 2003, \$29,500 more than alleged in the complaint. *See* Submission at 2, 7. Of this amount, APEX and Chao admit reimbursing a total of \$69,500 in contributions from family members, APEX employees, or their family members. *See id.*, at Ex. A. Chao solicited these

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<sup>1</sup> Hynes ultimately placed second in the Democratic primary to Barack Obama.

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contributions by approaching family members or APEX employees and asking them to make a contribution (and/or have a family member make a contribution), which he reimbursed with either an APEX corporate check or cash.<sup>2</sup> *See id.* at 5. According to the Submission, at the end of each quarter, Chao would gather all of the monetary contributions to Hynes for Senate and hand-deliver them to Hynes for Senate's office. *See id.* at 7. Chao gave the contributions directly to the campaign manager, Matthew Hynes, or to someone else in the office if he was not available. *See id.*

APEX and Chao deny reimbursing the remaining \$18,500 in contribution to Hynes for Senate. They claim that Chao personally contributed \$14,000 to Hynes for Senate and his wife, Annie Ma Chao, contributed an additional \$4,500 to the committee.<sup>3</sup> *See id.*, at 7. In both cases, Chao contends that the contributions came from personal funds. *See id.* In support of this claim, Chao provides personal checks to Hynes for Senate that either he or his wife signed. *See id.*, at Ex. D.

APEX and Chao contributed the remaining \$1,500 to Hynes for Senate by supplying the campaign with office furniture free of charge. According to the Submission, in the fall of 2003, Hynes for Senate approached Chao and asked if he had any used furniture he could contribute because the Hynes campaign increased the size of its campaign staff and office space. *See id.*, at 7. Chao agreed and provided desks from APEX's offices and a brand new sofa and refrigerator that he purchased with APEX corporate funds. *See id.*

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<sup>2</sup> In addition to the individuals identified in the complaint as allegedly being reimbursed, the Submission names Frances Mattivi, an APEX employee, and Jeff Burdelik, Marian Steng and Mei Fung Choi, relatives of APEX employees, as having contributions to Hynes for Senate reimbursed with APEX funds. *See Submission*, at Ex. A.

<sup>3</sup> Hynes ran against Blair Hull, who spent \$29 million of his own money in the primary, thus invoking the Millionaire's Amendment. Based on Hull's campaign expenditures, the contribution limit for individuals increased to a total of \$14,000 (\$12,000 for the primary and \$2,000 for the general election). *See* 2 U.S.C. § 441a(1)(1)(c)(iii)

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In addition to the contributions to Hynes for Senate that APEX and Chao reimbursed, the Submission identifies contributions to other federal committees that were reimbursed in 2002. According to the Submission, while working on Hynes's state reelection campaign in 2002, Matthew Hynes approached Chao and asked him to contribute or solicit contributions for the federal campaigns of Marty Castro, Bill Nelson, and Mark Shriver. *See* Submission, at 6. According to Chao, Matthew Hynes wanted to build a base to assist his brother in a potential federal race. *See id.* Chao agreed to help and solicited contributions from APEX employees and their relatives with the promise that he would reimburse them for the full amount of the individuals' contributions. *See id.* Chao claims to have raised a total of \$6,000 in 2002 for the federal candidates identified by Matthew Hynes. *See id.* All told, APEX and Chao admit to using corporate funds to make \$77,000 in contributions to federal candidates in 2002 and 2003, which are specifically identified in the following chart:

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12/30/03	Sharon Linares	APEX employee	\$1,600	Hynes for Senate
12/30/03	Marian Stang	Dawn Burdelik's mother	\$1,800	Hynes for Senate
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		<b>Total</b>	<b>\$77,000</b>	

### III. LEGAL ANALYSIS

APEX acknowledges reimbursing contributions made by others with corporate funds.

See Response, at 2; Submission, at 2.

Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.

§ 441b(a). In addition, section 441b(a) prohibits any officer or director of any corporation from

consenting to any expenditure or contribution by the corporation. The Act also provides that no person shall make a contribution in the name of another person or knowingly permit their name to be used to effect such a contribution. 2 U.S.C. § 441f.

APEX admits reimbursing \$48,000 of the contributions identified in the complaint. *See* Response, at 2. In the Submission, APEX also identifies \$6,000 in contributions made in 2002 and an additional \$21,500 in contributions made in 2003 that were reimbursed with APEX funds. *See* Submission, at 2.

In the Submission, APEX also discloses that it used corporate funds to contribute approximately \$1,500 in furniture to Hynes for Senate in October 2003. *See* Submission, at 7.

#### IV. CONCLUSION

Accordingly, there is reason to believe that APEX violated 2 U.S.C. §§ 441b(a) and 441f by making \$75,500 in contributions in the names of others and using corporate funds to reimburse the contributions and by making an in-kind contribution of \$1,500 with corporate funds.